

(2018) 04 RAJ CK 0179
In the Rajasthan High Court
Case No : Criminal Revision No. 52 of 2017

Smt. Sharifa, Sharifan Bano @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 11-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 357, 360, 397, 401
Probation of Offenders Act, 1958 — Section 3, 4, 4(1), 5, 11(4)
Indian Penal Code, 1860 — Section 147, 148, 149, 323, 325, 448

Citation : (2018) 04 RAJ CK 0179

Hon'ble Judges : P.K. LOHRA, J

Bench : Single Bench

Advocate : R.K. Charan, L.R. Upadhyay, Navneet, Dheeraj Sharma

Final Decision : Allowed

Judgement

Petitioner-complainant has preferred this revision petition under Section 397/401 Cr.P.C. and Section 11(4) of the Probation of Offenders Act to challenge judgment dated 12.09.2016, passed by learned Special Judge (SC/ST Cases), Udaipur (for short, â??learned appellate Courtâ??) to the extent of granting benefit of Section 4(1) of Probation of Offenders Act to the accusedrespondents as well as adequacy of the amount of compensation awarded under Section 357 Cr.P.C.

Brief facts of the case are that petitioner-complainant lodged a written report at Police Station Vallabh Nagar on 05.05.2010 with the averments that

on that day, at about 3:00 pm, the accused persons, viz., Bablu, Sikander, Shokat, Abdul and Allanur entered in her house having sword, lathi and sticks

etc. in their hands and belaboured her and Taskin. On report, the Police registered FIR No.73/2010 and after completion of investigation filed charge-

sheet against the accused persons. The learned trial Court framed the charges against accused persons for the offences under Section 147, 148, 448,

323/149, 325/149 IPC.Â In support of its case, prosecution examined as many as 11 witnesses including the statement of petitioner-complainant as

PW1 and also exhibited certain documents.Â After completion of the prosecution evidence, the accused persons were examined under Section 313

Cr.P.C. in which they denied the allegations levelled against them, however, they did not opt to produce any evidence in support of their case.Â After

hearing arguments of both the sides, learned trial Court acquitted accused-respondents for offence under Sections 148, 448, 325/149 IPC and

convicted them for offence under Sections 147, 323/149 IPC, however granted them benefit of Section 4(1) of the Probation of Offenders Act vide

order dated 02.02.2015.

Â Aggrieved by the order dated 02.02.2015, the petitionercomplainant preferred an appeal before the learned appellate Court, which vide its order

impugned though maintained conviction of the accused-respondents for offences under Sections 448 & 325/149 IPC but released them by granting

benefit of Section 4(1) of the Probation of Offenders Act while imposing certain conditions.

Feeling dismayed by the judgment of learned appellate Court as well as the judgment passed by learned trial Court, the petitioner-complainant has

preferred this revision petition.

Learned counsel for the petitioner submits that the learned Courts below have committed serious error in granting the benefit of probation to the

accused-respondents and awarding inadequate compensation.Â He further submits that since the prosecution has duly proved its case bringing home

the guilt against accusedrespondents, as such they are not entitled for the benefit of probation even then learned appellate Court while granting

probation to the accused-has enhanced the amount of compensation payable to the injured complainant-petitioner. He therefore has urged for setting

aside the impugned judgments to the extent of granting benefit of probation to the accusedrespondent or in the alternative enhancing the amount of

compensation.

On the other hand, the contention of the learned counsel for the respondents is that no compensation can be awarded under Section 357 Cr.P.C. when

accused is released on probation under Section 360 Cr.P.C.

Â I have heard learned counsel for the parties, perused the impugned judgments

and thoroughly scanned the entire record.

Before proceeding further in the matter, it would be apposite to reproduce Sections 3, 4 & 5 of the Probation Act, which read as under: -

3. Power of court to release certain offenders after admonition.- When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

Explanation.-For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

4. Power of court to release certain offenders on probation of good conduct.- (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under subsection (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under subsection (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Power of court to require released offenders to pay compensation and costs.

(1) The Court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay-

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence ; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under subsection (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.â??

Section 3 of the Probation Act is applicable to the offences punishable under various Sections of Indian Penal Code mentioned therein or any offence

punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous

conviction is proved against the convict. The court by which the person is found guilty, taking into consideration the circumstances of the case, nature

of the offence and character of the offender, may deem fit to release him on probation of good conduct. Whereas Section 4 of the Probation Act is

not applicable if the person is found guilty of having committed an offence punishable with death or imprisonment for life and is applicable to other

offences under the IPC and other Acts unless specifically excluded by the particular Act.Â Section 5 of the Act deals power of the Court to require

released offenders to pay compensation and costs.

Perusal of above provisions makes it clear that benefit of probation is to be extended to the person convicted for an offence not punishable with death

or imprisonment for life.Â Probation Act is one of the big departures from the ordinary rule of penology. It was promulgated with a view to provide

benefit of probation to the first offenders who are convicted for an offence not punishable with imprisonment of life or death. It is the result of the

recognition of the doctrine that object of criminal law is more to reform the individual offender than to punish him. The accusedrespondent is not

previous convict and there is nothing on the record that they have indulged in anti-social activities, nor the State has been able to show that they bear a

bad character and are habitual offenders. In all counts, a very wide discretion in the matter of sentence vests in the trial Court and the appellate Court.

The exercise of discretion is a matter of prudence and not of law. Nature of the offence and circumstances in which it is committed are also relevant

factors. If a convict, with no previous conviction, comes into contact with hardened criminals in jail such contact may have a harmful effect on the

first offender convicts. In every crime three factors i.e. (i) the motive of the offence; (ii) the magnitude of the offence; and (iii) the character of the

offender, are required to be taken into consideration for determining the appropriate sentence.

In the present case, a trivial incident took place for which accused-respondents have suffered the protracted criminal proceedings.Â Keeping in view

the protracted trial and the fact that no bad antecedents of accused-respondents have been brought on record by the petitioner in order to dub him as

habitual offender, learned Court below has rightly released them on probation by extending benefit under Section 4(1) of the Probation of Offenders

Act.

It needs to be added here that the Probation Act shifts the emphasis from deterrence to reformation and from the crime to the criminal in accordance

with the modern outlook on punishment. Reformation and rehabilitation of the offenders are the key-notes of the above referred provisions.

Petitioner has not been able to bring on record any material in respect of the character and antecedents of the accusedrespondentsÂ from which

inference may be drawn that they do not deserve probation, nor could point out any error or patent illegality on record in the impugned judgments so as

to enable this Court to interfere in the impugned judgment while exercising its revisional jurisdiction taking a different view than the one taken by the

learned courts below.Â In fact, the impugned judgment passed by learned appellate Court is found to be factually correct as well as legally justified,

however, the same deserves to be upheld for this reason also except for the quantum of compensation awarded.

I have otherwise independently assessed the arguments raised by learned counsel for the petitioner and after going through the complaint, I am of the

opinion that having regard to the circumstances, including the nature of the offence, it is expedient to give he benefit of provisions of the Act, which

has rightly been done by the learned trial Court and affirmed by appellate Court. In view of above, I do not find any illegality or perversity in the

impugned judgments passed by courts below and no ground for interference is made out to the extent of granting probation to the accused-

respondents.Â However, in the peculiar facts and circumstances of the case, it is deemed just and proper that the compensation awarded to the

petitioner is suitably enhanced.

Accordingly, the revision petition is partly allowed and the order of appellate Court is modified and compensation awarded to the accused-respondents

is enhanced from Rs.12,000/- to Rs.30,000/-. The accused-respondents are now directed to deposit the entire enhanced amount of Rs.30,000/- or the

amount of difference Â if any amount has already deposited, as the case may

be,Â within a period of four weeks from the date of this order before
learned trial Court. Upon depositing of the requisite amount,Â learned trial Court
shall release the same to the injuredpetitioner complainant in
accordance with law.